In the Supreme Court

OF THE

United States

OCTOBER TERM, 1957

No. 66

SAN DIEGO BUILDING TRADES COUNCIL, MILLMEN'S UNION, LOCAL 2020, BUILDING MATERIAL AND DUMP DRIVERS, LOCAL 36,

Petitioners,

vs.

J. S. GARMON, J. M. GARMON and W. A. GARMON,

Respondents.

PETITION FOR WRIT OF CERTIORARI to the Supreme Court of the State of California and MOTION TO DISPENSE WITH CERTIFICATION OF A PORTION OF THE RECORD.

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Petitioners pray that a writ of certiorari issue to review the judgment of the Supreme Court of the State of California rendered on January 16, 1958,

after the prior decision of that Court, rendered on December 2, 1955, was reversed and remanded for further proceedings not inconsistent with the opinion of this Court rendered on March 25, 1957.

It is respectfully requested that petitioners be relieved from the requirement of certifying that portion of the transcript of the record in this matter which is identical to that previously certified to this Court and printed in connection with the filing of the first petition for writ of certiorari in this case, the additions thereto being the decision of this Court rendered on March 25, 1957, printed in Appendix 'D' hereto, *infra,* p. 50, and the decision of the California Supreme Court, rendered on January 16, 1958, printed in Appendix 'E' hereto, *infra,* p. 53.

CITATIONS AND OPINIONS BELOW.

The judgment of the Superior Court dated July 31, 1953, is printed in Appendix 'A' hereto, *infra,* p. 1. The opinion of the Fourth District Court of Appeal of the State of California, printed in Appendix 'B' hereto, *infra,* p. 3, is unreported but found in 127 A.C.A. 2d 320. The opinion of the Supreme Court of the State of California, rendered on December 2, 1955, printed in Appendix 'C' hereto, *infra,* p. 21, is reported in 45 Cal. 2d 657. The opinion of the United States Supreme Court, printed in Appendix 'D' hereto, *infra,* p. 50, is reported in 353 U.S. 26. The opinion of the Supreme Court of the State of California, rendered on January 16, 1958, printed

in Appendix 'E' hereto, *infra*, p. 53, is reported in 49 A.C. 2d 605.

JURISDICTION.

The judgment of the Supreme Court of the State of California was entered on January 16, 1958, Appendix 'E', p. 53, *infra*. A timely petition for rehearing was filed and denied on February 13, 1958. The jurisdiction of this Court is invoked under 28 U.S.C. 1257.

STATUTE INVOLVED.

The statutory provisions involved are: The Labor-Management Relations Act, 1947, 29 U.S.C. 141 *et seq.* (Taft-Hartley Act).

QUESTIONS PRESENTED.

The second opinion of the California Supreme Court in this case raises the following questions:

1. May a state court award damages where the National Labor Relations Board has exclusive jurisdiction but has declined to act?

2. If the answer to question #1 is in the affirmative, may a state court assert jurisdiction to award damages where it may not award injunctive relief?

3. If the answers to questions #1 and #2 are in the affirmative may a state court assert jurisdiction

to award damages where such are incidental to and ancillary to the injunctive relief sought?

4. If the answers to questions #1, #2 and #3 are in the affirmative, may a state court assert jurisdiction to award damages based upon state statutes relating solely to labor-management relations?

5. If the answers to questions #1, #2, #3 and #4 are in the affirmative, may a state court assert jurisdiction to award damages where the only conduct involved is peaceful?

STATEMENT OF THE CASE.

The facts of this case are the same as stated in the first Petition for Writ of Certiorari submitted by your petitioners in this same matter. However, in order to clearly discuss the questions raised by this petition, some repetition is necessary.

Plaintiffs are engaged in the business of selling lumber and building materials as partners under the name of Valley Lumber Company. Defendants are the San Diego Building Trades Council, Millmen's Union, Local No. 2020, Building Material and Dump Drivers, Local No. 36. On or about November 15, 1952, the Unions requested a labor agreement with plaintiffs under one of the terms of which certain employees were required to make application for membership in the Unions within thirty (30) days, after hiring. The Company refused to sign the agree-

ment on the ground that it would be a violation of the National Labor Relations Act to do so before its employees or an appropriate unit thereof had designated the Union as their collective bargaining agent. Thereafter, the unions commenced peaceful picketing at the Company's place of business. The pickets carried a banner of moderate size upon which appeared the following words: "AFL PICKET—MILLMEN'S UNION #2020, TEAMSTERS' UNION #36 INVITES EMPLOYEES TO JOIN".

Plaintiffs brought an action on May 7, 1953 in the Superior Court of San Diego, California, a court of general jurisdiction, seeking an injunction against defendants to restrain picketing plaintiffs' place of business, alleging that plaintiffs were engaged in interstate commerce and that the activity of defendants was violative of the Management-Labor Relations Act. Damages were sought only as ancillary relief to the equitable action.

Defendants consistently challenged the jurisdiction of the trial Court on the grounds that the state Courts lacked jurisdiction in this matter and that if the alleged acts were illegal, at all, the National Labor Relations Board had exclusive jurisdiction thereof.

On May 7, 1953, plaintiffs requested the Regional Director of the National Labor Relations Board to determine the appropriate unit and to hold a representative election, which the Regional Director refused to do. This refusal was not appealed and no unfair labor practice charges were filed with the Board.

FACTS PRIOR TO THE GRANTING OF THE PETITION FOR WRIT OF CERTIORARI BY THIS COURT.

The trial Court found that the company was engaged in interstate commerce within the meaning of the Act; that the purpose of the picketing was to enforce demands for the execution of a union shop agreement; that the picketing was *peaceful,* and that the *alleged conduct was violative of the Labor-Management Relations Act.* The trial Court then proceeded to award injunctive relief and damages under that Act. It is significant that the trial Court did not find any violation of state laws and did not base any of the above remedies on any state law.

Defendant unions appealed from the decision of the trial Court on the ground that it lacked jurisdiction to grant such relief for alleged unfair labor practices under the Act; that the conduct of the unions was entirely lawful under the laws of the State of California; and, that plaintiffs had failed to exhaust their administrative remedies before the National Labor Relations Board.

The District Court of Appeal, Fourth Appellate District, State of California, in an unanimous opinion rendered on August 25, 1954 (127 A.C.A. 2d 320), Appendix 'C', *infra,* reversed the trial Court and held that the conduct involved was lawful and protected under the laws of the State of California, and that the state Court had no jurisdiction in a case where there is an allegation of unfair labor practices under the Labor-Management Relations Act. In reaching this latter conclusion, the District Court relied primarily on

Garner v. Teamsters, Chauffers & Helpers Local #776, 346 U.S. 485.

In applying the *Garner* case, the California District Court concluded that state Courts were precluded from giving a *different* and *additional* remedy for the correction of an *identical* grievance over which the National Labor Relations Board has exclusive jurisdiction.

Insofar as this petition is concerned, it is even more significant that the District Court of Appeal construed the case of *United Construction Workers v. Laburnum,* 347 U.S. 656 in determining whether or not the award of damages was proper. The Court, as to that question, stated:

> "However, in this state peaceful picketing is a lawful form of concerted action by members of a labor union."

and determined that the *Laburnum* case, *supra,* was not applicable, and that state Courts could not grant damages in a situation which was otherwise preempted by the National Labor Relations Act.

Plaintiffs appealed from the decision of the District Court of Appeal and on December 2, 1955 the Supreme Court of the State of California rendered a 4-3 decision holding that where the Board has declined to exercise its jurisdiction because of jurisdictional yardsticks, such action amounts to a declaration that national labor policy will not be jeopardized if the state Court assumes jurisdiction. The majority concluded that if the law were otherwise, Congress

would be denying a remedy to employers over whom the Board declines to exercise jurisdiction. This reasoning is identical to the January 16, 1958 opinion of the majority of that Court.

The strong dissent held that the foregoing reasoning was fallacious because:

(1) The National Labor Relations Board and the powers granted to it are an integral part of the federal law and that law is not intended to have application in a situation where the Board plays no part; it is inescapable that the federal laws are to be administered by the Board, not by the state Courts.

(2) The Board in refusing jurisdiction as it has power to do, has in effect determined that the federal law should not apply in this case.

(3) It is neither feasible nor fair to apply the federal law.

(4) There has not been such a refusal to exercise jurisdiction by the Board here as to justify the conclusion that the state Court has jurisdiction.

Subsequently, the California Supreme Court denied a timely petition for rehearing filed by defendants, who thereupon petitioned this Court for the issuance of a writ of certiorari, which petition was granted.

FACTS SUBSEQUENT TO THE GRANTING OF THE PETITION FOR WRIT OF CERTIORARI BY THIS COURT.

This Court subsequently reversed the decision of the California Supreme Court noting that state Courts

lacked jurisdiction to grant injunctive relief in this matter and remanded the case back to the California Court for further proceedings to determine the basis upon which the award of damages had been sustained. In so doing, reliance was placed upon *Guss v. Utah Labor Relations Board,* 353 U.S. 1, wherein this Court stated at page 9:

> "We hold that the proviso to Section 10(a) is the exclusive means whereby States may be enabled to act concerning the matters which Congress has entrusted to the National Labor Relations Board. We find support for our holding in prior cases in this court."

As to the particular question of damages, this Court stated in the *Garmon* decision, at page 29:

> "Respondents, however, argue that the award of damages must be sustained (under *United Construction Workers, etc. v. Laburnum Construction Corp.,* 347 U.S. 656, 74 S. Ct. 833, 98 L. Ed. 1025. We do not reach this question. The California Supreme Court leaves us in doubt, but its opinion indicates that it felt bound to 'apply' or in some sense follow federal law in this case. There is, of course, no such compulsion. *Laburnum* sustained an award of damages under state tort law for violent conduct. We cannot know that the California court would have interpreted its own state law to allow an award of damages in this different situation."

The second decision of the California Supreme Court in this matter reluctantly conceded that the state Courts have no jurisdiction in this case insofar

as injunctive relief is concerned but concluded that jurisdiction to award damages was retained where the National Labor Relations Board has declined to act, even though the picketing involved was peaceful. The majority did not base the award of damages upon traditional tort laws but rather upon statutes dealing solely with labor-management relations, which were reconstrued in order to permit such award.

In making its decision, the California Court stated:

> "The fact that the particular tort in the *Laburnum* case was said to be a common-law tort, or one involving physical violence, is, of itself, not controlling. To confine the *Laburnum* case to its own facts would be to completely ignore the rationale of the decision. It would require also that we ignore the language by which the present case was remanded for reconsideration." (49 A.C. 2d 605, 614.)

Chief Justice Gibson and Justices Traynor and Carter, all of whom dissented from the first opinion, concurred in a strong dissent stating:

> "The possibility of conflict of policies, pointed up in the *Garner* case, remains the principal consideration, whether damages or injunctive relief, violence or peaceful picketing, common law or statutory rights to recovery are involved.
>
> Thus, if there is a conflict between state and federal substantive rules in terms of conduct condemned or protected, state law must of course give way no matter what remedy it provides. Likewise, even if state and federal laws have an appearance of harmony, as applied by different tribunals they may become inconsistent and fed-

eral policy indirectly thwarted. This potential inconsistency was the consideration that lay behind the *Garner* decision and prompted the statement that, 'a multiplicity of tribunals and a diversity of procedures are quite as apt to produce incompatible or conflicting adjudications as are different rules of substantive law.'" (49 A.C. 2d 605, 627.)

REASONS FOR GRANTING PETITION.

1. The conclusions reached by the majority of the California Supreme Court in its second opinion in this matter are directly contrary to the decision of this Court in *United Construction Workers, etc. v. Laburnum*, 347 U.S. 646, *supra*, *Guss v. Utah Labor Relations Board*, 353 U.S. 1, *supra*, *Amalgamated Meat Cutters, etc. v. Fairlawn Meats*, 353 U.S. 20, and, *San Diego Building Trades Council v. Garmon*, 353 U.S. 26.

An examination of the reasons upon which the *Laburnum* case is grounded will be helpful in resolving the questions raised by this petition.

First, this Court noted that the case of *Garner v. Teamsters, Chauffers & Helpers Local #776*, 346 U.S. 485, *supra*, would not be construed as excluding state courts from awarding damages in *common-law* tort actions because:

> ". . . Congress has neither provided nor suggested any substitute for the *traditional* state court procedures for collecting damages for injuries caused by tortious conduct." (Emphasis added.) (347 U.S. 656, 663.)

Obviously, the instant case represents neither a common-law action for damages nor the institution of traditional procedures in controversies involving labor and management in the State of California. Here, the action was not brought to obtain redress for tortious conduct, but the theory of the complaint was that defendants had committed a violation of the National Labor Relations Act—damages were sought and awarded as ancillary relief. Significantly, damages were not sought or awarded for a violation of state law. On redecision, the majority of the California Supreme Court affirmed the initial award of damages not upon the grounds that it was originally granted but rather upon an alleged violation of state statutes dealing solely with labor-management relations; conduct which had been uniformly held lawful for more than fifty years. Thus, the majority of the California Supreme Court chose not to apply traditional methods and remedies in such actions and did not base the sustaining of the award of damages upon common-law but rather upon statutes of narrow application dealing solely with labor-management relations.

Second, this Court noted that in the *Laburnum* case the fact situation surrounding the award of damages by the state court involved physically violent conduct. In the instant case, all parties are agreed and all Courts have conceded that the only conduct involved was peaceful.

Third, and of greater significance, this Court in the *Laburnum* case noted its concern with whether or not the exercise of jurisdiction by a state court in a par-

ticular instance would conflict with the federal laws governing labor relations; it was concluded that if the exercise of jurisdiction by state courts resulted in an immediate or potential conflict with federal laws, then state courts could not assert jurisdiction. In reaching this conclusion, the *Garner* case, *supra,* was relied upon. In that case this Court stated:

> "Congress did not merely lay down a substantive rule of law to be enforced by any tribunal competent to apply law generally to the parties. It went on to confine primary interpretation and application of its rules to a specific and specially constituted tribunal and prescribed a particular procedure for investigation, complaint and notice, and hearing and decision, including judicial relief pending the final administrative order. Congress evidently considered that centralized administration of specially designed procedures was necessary to obtain *uniform application* of its substantive rules and to *avoid these diversities and conflicts likely to result from a variety of local procedures and attitudes towards labor controversies.* . . . A multiplicity of tribunals and a diversity of procedures are quite as apt to produce incompatible or conflicting adjudications as are different rules of substantive law." (346 U.S. 485, 490.) (Emphasis added.)

Thus, the basic rationale of the *Laburnum* and *Garner* cases would be defeated if the majority opinion in this case were allowed to stand. It cannot be doubted that the National Labor Relations Board would have had jurisdiction over this entire controversy if it had not declined to act. This is admitted

by all parties. In addition, this Court has already held that as to injunctive relief, the state Court did not have jurisdiction to act. In such a situation, it becomes obvious that the above language of the *Garner* case is particularly applicable for it could not have been the thought of both Congress and this Court that state tribunals could award damages where they could not award injunctive relief and where the former would reach the same results in regulating labor-management relations as would the application of the latter form of remedy. If this is to be the case, conflicts of the type which Congress sought to avoid are more than likely to be the result.

This contention is strengthened by this Court's statement, above quoted, that there is as much danger of conflicting application of laws that depend upon "differing attitudes" as there is a danger of the application of expressly conflicting laws. It cannot be doubted that the majority decision in this case was motivated by just such "attitudes". This is clear from the fact that the award of damages was initially grounded upon an alleged violation of the National Labor Relations Act and was granted as ancillary relief thereto and now is justified by a complete reversal of a consistent and historical application of the labor laws of the State of California. The importance of the reversal by the California Supreme Court of the basis for its sustaining of the award of damages in this case should not be overlooked.

Again, if the majority opinion were to become the law of labor relations, state courts could defeat the

carefully protected uniformity which is the very reason for the doctrine of preemption under Section 10(a) of the Act, for regardless of the particular fact situation, an award of damages could be granted even where the Board had actually exercised jurisdiction in a matter. In fact, the latter argument is precisely applicable here, for the Board, in exercising its discretion and choosing not to accept jurisdiction over this controversy did, in fact, act.

Furthermore, it is clear that a judicial or administrative tribunal must make the same determinations and interpretations whether it awards damages or equitable relief in a given controversy. This is particularly true where the damages, as in this case, are sought merely as incidental or ancillary relief. It is the factual situation and not the form of relief which is the guiding factor in the action to be taken by such a tribunal.

Thus, if the majority opinion were to prevail the exclusive jurisdiction of the National Labor Relations Board would be jeopardized by the possibility of inconsistent interpretations on the part of state courts which would be permitted to exercise jurisdiction and award damages in the same controversy regardless of the action taken by the Board. Such inconsistencies would potentially exist in every labor dispute; the Board might refuse to grant equitable relief but state courts could, nevertheless, upon the interpretation of the same facts grant damages in the same controversy. As noted by the dissenters such a situation creates a real conflict for, as a practical matter,

more often than not, an award of damages accomplishes the same result as would an award of injunctive relief.

Clearly, then, the rationale of this Court in the *Guss, Garmon,* and *Fairlawn* cases, *supra,* is equally applicable to an award of damages as it is to an award of equitable relief. Certainly, that rationale should be applicable where damages are ancillary and incidental to such equitable relief.

This argument is supported by the interpretation of Section 10(a) of the Act as a provision which requires consistency as a requisite to the cession of jurisdiction to state courts in certain expressly specified cases. *Guss v. Utah Labor Relations Board,* 353 U.S. 1; *Amalgamated Meat Cutters, etc. v. Fairlawn Meats,* 353 U.S. 20; *San Diego Building Trades Council v. Garmon,* 353 U.S. 26. In this connection, it should be noted that Section 10(a) does not make a distinction as to the form of relief as to which a state court may exercise jurisdiction. Neither is such a distinction found in the number of cited cases. Therefore, the distinctions, based upon the form of the remedy rather than the substance of its effect, made by the majority below, is completely unsupported by prior decisions of this Court on this question.

The real potential of inconsistent and conflicting application of labor laws created by the majority decision here was recognized by the dissenters below who stated:

> ". . . (H)owever, since damages are a means of enforcing policy and controlling conduct, although somewhat less direct than an injunction, the form of the remedy alone would not seem to be the consideration determining whether state law may conflict with federal law.
>
> It is readily apparent that the present case provides no such assurance that there will not be conflict between state and federal laws as applied. Defendants engaged in peaceful picketing, not threats and violence; their conduct was not of a type that gives assurance how the National Labor Relations Board would view it under Section 8(b), or that the Board might not find it a protected activity under Section 7." (49 A.C. 2d 605, 629.)

The minority thus held that the danger of conflict transcends the form of remedy and goes to the very substance of the fact situation and the matters or dispute sought to be regulated. In this connection, the dissenters conclude that:

> "Because of the danger of conflict in the application of state law with the National Labor Relations Board's application of the federal statute the trial court was without jurisdiction to issue an injunction. [We are] of the opinion that for the same reason it was without jurisdiction to award damages." (*Id.*)

2. It should again be emphasized that the basis upon which the majority of the California Supreme Court sustained the award of damages in its first

opinion was that state courts could assert jurisdiction *under the Act* on the theory that Board declination of jurisdiction was tantamount to a cession of jurisdiction to state courts. This was the identical theory underlying the sustaining of the award of injunctive relief, a theory which was rejected by this Court.

Thus, the fact that the Board has declined jurisdiction in this matter must not be lost sight of merely because the majority opinion in its second decision alleges a different basis for the sustaining of the award of damages. The fact that the Board could have exercised jurisdiction over all aspects of the controversy in this case if it had assumed jurisdiction must likewise not be negated. Clearly, in such a case, remedies provided by state courts would necessarily parallel the remedies available under the Act in a situation involving only peaceful conduct. Thus, the action or inaction of the Board is an important element in the determination of the ultimate question of whether or not a conflict or a potential conflict would result.

The theory of the majority of the California Court is important for still another reason; in its first opinion, it was held that if state tribunals were not permitted to act, then the injured party would be left without a legal remedy. This argument, too, was rejected by this Court which held that an argument of this type was better directed to the legislature and not to the Courts. Nevertheless, the majority in its second sustaining of the award of

damages again emphasizes and repeats this very argument, stating:

> "In view of the decisions of the Supreme Court holding that state agencies and courts lacked jurisdiction to grant injunctive relief under any circumstances in interstate commerce cases, there would seem to be nothing left to the states if their courts are also prohibited from making an award for damages in a proper case." (49 A.C. 2d 605, 612.)

The majority assumes that if it is not permitted to assert jurisdiction to award damages here, the injured persons would be precluded from being compensated for injuries suffered because of allegedly wrongful conduct. This completely negates the detailed scheme of regulation developed by Congress in permitting federal Courts to assume jurisdiction, in actions for damages, under Sections 301 and 303 of the Act.

As stated by Judge Yankwich in a recent decision arising in the Southern District Court in California:

> "... it is quite evident that the Congress intended to grant to the employer a right of action for damages which the Supreme Court has stated is not tied to, or dependent on, the status of administrative proceedings relating to the same controversy before the National Labor Relations Board. ... The object of statutes of this character is to aid the furthering of the social policy of the law by providing a private action by an individual for damages caused by the violation of the Act—as is

> the case of a private action for treble damages for violation of the anti-trust laws. . . .
>
> So, granting that the National Labor Relations Act constitutes a complete scheme for the determination of labor and management disputes affecting interstate commerce, which leaves no room for judicial intervention except by way of enforcement of the Board's orders by the Courts of Appeals. . . ."
>
> *Lewis Food Co. v. Los Angeles Meat, etc. Drivers,* (S.D. Cal., 1958) ..... F. Supp. ....., 34 Labor Cases (CCH) ¶ 71,334, p. 96,184, 189.

The significance of the above quoted language is that Congress has, under the Act, provided for an action for damages. The fact that the Act provides for such actions in federal Courts does not leave the parties without a remedy, as the majority argues.

The majority thus assumes that any fact situation would be a "proper" case for the granting of an award of damages, while at the same time admitting that in an interstate commerce situation injunctive relief would not be permissible. In doing so, the majority negates the fact that the *Laburnum* case, *supra,* and the *Garner* and *Weber* cases which construed it, have clearly delineated the "proper" cases in which the courts may assert jurisdiction to award damages in cases affecting interstate commerce—cases of violent conduct, cases where the award is based upon common-law tort principles, rather than upon specific laws regulating labor-management relations.

This Court, in *Weber v. Anheuser-Busch,* 348 U.S. 468, 477, added still another element to guide the courts as to what is or is not a proper case for the award of damages. There, it was noted that state courts may assert jurisdiction to redress injured persons for *completed* wrongs resulting from physically violent conduct. Here, the award of damages is not to redress persons injured by completed wrongs, but is aimed and applied specifically to regulate the relations between labor and management, *both* of whom were using the peaceful and traditional methods of persuasion. To negate this difference is to negate the very essence of labor-management relations as recognized by the Act in general and by Sections 7 and 8 thereof in particular.

3. The majority opinion is defective for still another reason for it relied heavily on the case of *Benz v. Campagnia Naviera Hidalgo,* 77 S. Ct. 699, in supporting its jurisdiction in this case. However, the crucial element of that case was ignored for there it was held that the Act was totally inapplicable since the controversy involved a labor dispute with *foreign nationals,* and thus, the question of preemption under the Act was in no way involved. The *Benz* case, then involved a situation where the federal legal and administrative agencies *initially* had no jurisdiction over the subject matter of the dispute. That case, therefore, is patently inapplicable to the instant case where federal legal and administrative agencies have already been held to have exclusive jurisdiction as to injunctive relief and where the Board would have

admittedly had jurisdiction as to all aspects of the dispute if it had not declined to act.

4. Similarly the majority relies heavily upon the decisions of this Court in *International Brotherhood of Teamsters v. Vogt, Inc.*, 354 U.S. 284 and *Stacey v. Pappas*, 350 U.S. 870, to support its assertion of jurisdiction. The majority admits that those cases did not involve situations where the employer's business and/or the dispute involved affected interstate commerce within the meaning of the Act. (At pp. 619-621.) It is indeed difficult to see how cases which were not concerned with preemption under the Labor-Management Relations Act or conflict with that Act could be held to support the assertion of jurisdiction where the precise question of conflict with the Act is the basic element.

5. As discussed above, the majority opinion violates and misapplies the mandate of this Court in reversing and remanding the instant case for further proceedings not inconsistent with its decision. As stated by your petitioners in their petition for rehearing in this matter, the Court not only misapplied the *Laburnum* case, *supra*, but misinterpreted the language of the remand to mean that since the initial award of damages was not reversed, this Court would permit damages under that case in this "different situation". Clearly, such reasoning is erroneous for if such were the case, this Court would have merely affirmed the original award and would not have remanded the case back for further proceedings. Obviously, the initial award of damages was neither re-

versed nor affirmed because the basis upon which the California Court acted was unclear.

The mandate of this Court is further violated by the fact that the existing state law was not applied. This Court stated:

> "We cannot know that the California court would have interpreted its own state law to allow an award of damages in this different situation." (353 U.S. 27, 29.)

When this case was originally before the California Supreme Court, it also considered the case of *Benton v. Painters Union,* 45 Cal. 2d 677, in which it stated at page 681:

> "An employer may not obtain relief from economic pressure asserted in an effort to compel him to sign an union shop agreement."

That was the status of the law when this matter was first before this Court. Now the majority, without even mentioning the *Benton* case, *supra,* states that the law is different. The majority of the California Court does not apply the state law as it existed when this case was tried and decided the first time but substitutes a completely new and foreign concept in an apparent attempt to overcome the principle of federal preemption now well-established in this field.

CONCLUSION.

For the foregoing reasons, this Petition for Writ of Certiorari should be granted.

Dated, San Francisco, California,
May 1, 1958.

Respectfully submitted,

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(Appendices A, B, C, D and E Follow.)